

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Jan 22, 2020**

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

MONICA PESINA, (01),

Defendant.

No. 4:19-cr-06063-SMJ-01

**ORDER MEMORIALIZING  
COURT'S ORAL RULING ON  
DEFENDANT MONICA PESINA'S  
MOTION TO REVOKE  
DETENTION ORDER**

On January 9, 2020, the Court heard argument on Defendant Monica Pesina's (01) Motion to Revoke Detention Order, ECF No. 58. Defendant moved to revoke the detention order issued by Magistrate Judge Dimke on November 22, 2019, ECF No. 48. Defendant argued she had rebutted the presumption of detention by showing she is not a flight risk and is not a danger to the community. ECF No. 58 at 4. At the conclusion of the hearing, the Court orally denied the motion, finding Defendant had failed to rebut the presumption of detention and that the Government had shown that there is no combination of conditions that will reasonably assure the safety of the community and the Defendant's appearance as required. This Order memorializes and supplements the Court's oral ruling.

ORDER MEMORIALIZING COURT'S ORAL RULING ON DEFENDANT  
MONICA PESINA'S MOTION TO REVOKE DETENTION ORDER - 1

## BACKGROUND

On November 11, 2019, Defendant<sup>1</sup> was indicted for one count of possession with intent to distribute 50 grams or more of actual (pure) methamphetamine, and one count of possession with intent to distribute heroin. ECF No. 6. As described in the Complaint, ECF No. 1, on June 4, 2019, a Pasco Police Officer stopped the vehicle in which Defendant, Co-Defendant Nicholas Sean Carter (02), and a third person were driving. ECF No. 1 at 6. A K9 unit responded to the scene, the K9 alerted for the presence of narcotics, and the vehicle was impounded. *Id.*

During the traffic stop, Co-Defendant Carter was found to be in possession of a loaded handgun and one ounce of methamphetamine, and he admitted he was a felon who could not legally possess a firearm. *Id.* After the issuance of a state search warrant for the vehicle, police found a backpack in the trunk with about 372 grams of purported methamphetamine, about 55 grams of purported heroin, and \$26,950 in cash, as well as a digital scale and several empty Ziploc bags. *Id.* at 7. The backpack also contained a debit card, a health insurance identification card, and a bank deposit receipt in Defendant's name. *Id.* at 8.

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<sup>1</sup> Unless otherwise specified, references to "Defendant" throughout are to Defendant Monica Pesina (01).

1 An arrest warrant for Defendant was issued on October 22, 2019. ECF No. 2.  
2 Defendant and Co-Defendant Carter were arrested sixteen days later in Dixie,  
3 Washington at a residence Defendant told law enforcement belongs to a longtime  
4 friend. ECF No. 37. The Government represents that Defendant and Co-Defendant  
5 went to the residence because they knew a warrant would or had been issued and  
6 wanted to avoid detection. ECF No. 64 at 10.

7 In the time between the June 2019 conduct for which Defendant and Co-  
8 Defendant were indicted and their November 2019 arrests, the Government  
9 represents that additional events transpired which may result in further indictments.  
10 ECF No. 64 at 5–12. The Government represents Defendant is aware of the  
11 additional potential indictments. ECF No. 64 at 7. Defendant represents that no  
12 evidence related to these events has been disclosed to her. ECF No. 67 at 5.

13 First, Defendant's residence was searched pursuant to a warrant in September  
14 2019, and an additional 5 ounces of methamphetamine, 4 ounces of heroin, 15 fake  
15 OxyContin pills believed to contain fentanyl, 30 pounds of marijuana, and multiple  
16 firearms were found. *Id.* at 6–7. In October, there was an incident in which six  
17 subjects were standing around a victim's car and one person was hitting it with a bat.  
18 *Id.* at 8. The victim reported the individuals had pulled a gun and knife on her in the  
19 past. *Id.* Two of the subjects were described as a white female in her 20's and a white

1 male between 20 to 40.<sup>2</sup> *Id.* Co-Defendant Carter was observed walking shortly  
2 thereafter and was detained; he was in possession of methamphetamine and heroin  
3 and may have discarded a loaded pistol while being followed by police. *Id.* at 8–9.  
4 Finally, when Defendant and Co-Defendant Carter were arrested, the residence at  
5 which they were found was searched pursuant to a warrant and two handguns,  
6 methamphetamine, cocaine, heroin, 84 pills suspected of containing fentanyl, a  
7 digital scale and plastic bags were found. *Id.* at 11–12.

8 On November 12, 2019, Defendant appeared before Magistrate Judge Dimke  
9 for a detention hearing, but the hearing was continued to allow time for a substance  
10 abuse evaluation. ECF No. 46 at 1. Defendant appeared again on November 22, 2019  
11 before Judge Dimke, at which time Judge Dimke heard oral argument and ordered  
12 Defendant detained. ECF Nos. 47, 48. Judge Dimke found that there was a rebuttable  
13 presumption under 18 U.S.C. § 3142(e)(3) that no condition or combination of  
14 conditions will reasonably assure Defendant’s appearance as required and the safety  
15 of the community. ECF No. 48 at 2. Judge Dimke then found that Defendant had not  
16 introduced sufficient evidence to rebut the presumption, that the Government proved  
17 by clear and convincing evidence that no condition or combination of conditions of

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19 <sup>2</sup> It is not clear whether the October incident involved only Co-Defendant Carter or  
20 if the Government is alleging Defendant was also involved in these events.

1 release will reasonably assure the safety of any other person and the community, and  
2 that the Government proved by a preponderance of the evidence that no condition  
3 or combination of conditions of release will reasonably assure the defendant's  
4 appearance as required. ECF No. 48 at 2. Judge Dimke made extensive additional  
5 factual findings, drawing on the evidence related to the events for which Defendant  
6 has not yet been indicted as well as the evidence from the pretrial services reports.  
7 ECF No. 48 at 3.

8 At the January 9, 2020 hearing, Defendant presented testimony from two  
9 witnesses. First, Defendant's friend of fifteen years, Lena Samorano, testified about  
10 her own personal history of substance abuse, her nearly four years of sobriety, and  
11 her personal history with Defendant. Ms. Samorano described how she became clean  
12 and sober after a judge sentenced her to participate in a program that allowed her to  
13 live at home while receiving monitoring and support, including outpatient drug  
14 treatment. She testified that she would support Defendant if Defendant were released  
15 to a clean and sober housing program. However, she also testified that Defendant  
16 left her children with Ms. Samorano beginning approximately a month before  
17 Defendant was arrested, during which time Defendant mostly had phone contact  
18 with her children and Ms. Samorano did not know where Defendant was living.

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1 Defendant also called Deeanne Goodrich, an employee of Oxford House, the  
2 clean and sober housing facility at which Defendant proposed to stay if released. Ms.  
3 Goodrich testified to the support and monitoring programs at the facility and the high  
4 success rate for participants who stay in Oxford Houses for one year. Ms. Goodrich  
5 also testified that the program has an open-door policy with no security.

### 6 **LEGAL STANDARD**

7 The Bail Reform Act provides that a detention order issued by a magistrate  
8 judge may be reviewed by the court with original jurisdiction over the offense. 18  
9 U.S.C. § 3145(b). A district court reviewing a magistrate judge's order concerning  
10 detention does so *de novo*, without deference to the magistrate judge's factual  
11 findings. *See United States v. Koenig*, 912 F.2d 1190, 1191 (9th Cir. 1990).  
12 However, the "court is not required to start over in every case, and proceed as if the  
13 magistrate's decision and findings did not exist." *Id.* at 1193. The district court must,  
14 however, reach its own independent determination. *Id.*

15 Under the Bail Reform Act, defendants awaiting trial may be released on  
16 personal recognizance or bond, conditionally released, or detained. *See* 18 U.S.C.  
17 § 3142(a). Pretrial detention should be granted only "in rare circumstances . . . and  
18 doubts regarding the propriety of release should be resolved in the defendant's  
19 favor." *United States v. Gebro*, 948 F.2d 1118, 1121 (9th Cir. 1991). The Court may

1 impose conditions that it deems necessary to guard against a defendant's flight or  
2 danger to the community. *See* 18 U.S.C. § 3142(c). The Court must consider four  
3 factors in determining whether there are conditions of release that will reasonably  
4 assure the appearance of the person and the safety of the community:

5 (1) the nature and circumstances of the offense charged; (2) the weight  
6 of the evidence against the person; (3) the history and characteristics of  
7 the person, including the person's character, physical and mental  
8 condition, family and community ties, employment, financial  
resources, past criminal conduct, and history relating to drug or alcohol  
abuse; and (4) the nature and seriousness of the danger to any person or  
the community that would be posed by the defendant's release.

9 *United States v. Hir*, 517 F.3d 1081, 1086 (9th Cir. 2008).

10 If there is probable cause to believe the defendant committed an offense for  
11 which a maximum term of imprisonment of ten years or more is prescribed under  
12 the Controlled Substances Act, then there is a rebuttable presumption that no  
13 condition or combination of conditions will reasonably assure the appearance of the  
14 person as required and the safety of the community. 18 U.S.C. § 3142(e). Although  
15 the presumption shifts the burden of production to the defendant, the burden of  
16 persuasion remains with the Government. *Hir*, 517 F.3d at 1086 (citing 18 U.S.C.  
17 § 3142(g)). Defendant must only produce "some evidence" to rebut the  
18 presumption. *See United States v. Jessup*, 757 F.2d 378, 384 (1st Cir. 1985)); *see*  
19 *also United States v. Ward*, 63 F. Supp. 2d 1203, 1209 (C.D. Cal. Jul. 12, 1999).

1 Even if a defendant rebuts the 18 U.S.C. § 3142(e) presumption with  
2 evidence, the presumption “remains in the case as an evidentiary finding militating  
3 against release, to be weighed along with other evidence relevant to factors listed  
4 in § 3142(g).” *Hir*, 517 F.3d at 1086 (quoting *United States v. Dominguez*, 783  
5 F.2d 702, 707 (7th Cir. 1986)).

### 6 DISCUSSION

7 Defendant moves the Court to revoke the Detention Order on the grounds  
8 that the conditions recommended by the United States Probation Office are  
9 sufficient to reasonably assure her appearance as required and reasonably assure the  
10 safety of the community. ECF No. 58. Defendant acknowledges that a rebuttable  
11 presumption arises because Count 1 carries a mandatory minimum of ten years  
12 confinement. ECF No. 58 at 4; *see also* 18 U.S.C. § 3142(e)(3)(A); 21 U.S.C.  
13 § 841(b)(1)(A).

14 The evidence presented by Defendant does not rebut the presumption that  
15 detention is necessary. Although the standard only requires that the Defendant  
16 present “some evidence,” this evidence must actually rebut the presumption that no  
17 combination of conditions will reasonably assure Defendant’s appearance and the  
18 safety of the community. *See Jessup*, 757 F.2d at 384. The testimony indicated that  
19 Defendant would have peer support and a housing program at which she could



1 reside that would provide support to address Defendant's substance abuse.  
2 However, the testimony showed neither that, facing a potentially lengthy term of  
3 imprisonment, Defendant would not be a flight risk, nor that she would remain in  
4 the program and not be a danger to the community.

5 Even if Defendant had overcome the presumption, detention would still be  
6 appropriate because all four of the 18 U.S.C. § 3142 factors weigh against pretrial  
7 release. *See Hir*, 517 F.3d at 1086. The alleged offenses, possession with intent to  
8 distribute 50 grams or more of actual (pure) methamphetamine and possession with  
9 intent to distribute heroin, are serious offenses. The weight of the evidence,  
10 although the least important factor in the analysis, appears to be fairly substantial.  
11 *See* ECF No. 1 at 7–8 (describing 372 grams methamphetamine, 55 grams heroin,  
12 scale, and bags found pursuant to warrant).

13 Evidence in support of the future indictments includes findings, pursuant to  
14 a warrant, of additional narcotics and multiple firearms in the address where  
15 Defendant reportedly resided with her minor children and also further findings of  
16 additional narcotics and two more firearms in the residence at which Defendant and  
17 Co-Defendant Carter were arrested. ECF No. 64 at 7; *see also* ECF No. 37 at 2.  
18 Defendant argues this evidence should not be considered because it has not been  
19 disclosed to Defendant pursuant to Local Criminal Rule 16. However, Defendant is

1 aware of the potential additional indictments and this is a consideration in  
2 determining that she is a flight risk. Further, although there is no indication that  
3 Defendant owned the firearms, they were found at the address she identified as her  
4 place of residence. ECF No. 64 at 7; *see also* ECF No. 37 at 2. This indicates that  
5 the nature and seriousness of the danger to the community are substantial.

6 Finally, Defendant's personal history and characteristics weigh strongly  
7 against pretrial release. Defendant has lived in Walla Walla or the Tri-Cities area  
8 her whole life and has no passport and limited travel history. ECF No. 37 at 1–2.  
9 However, Defendant lacks stable employment. *See* ECF No. 37 at 3 (describing  
10 Defendant as self-employed for five years doing odd jobs including home repair,  
11 cleaning, and painting obtained through online websites). Defendant also does not  
12 appear to have a stable residence, as a family member reports she has been evicted  
13 from her prior residence. ECF No. 37 at 2.

14 Although Defendant has family ties to the area, the Court is not persuaded  
15 that these ties will prevent her from fleeing. Defendant reports only telephone  
16 contact with her mother and only social media contact with her adult child, though  
17 she does have regular contact with her brother. ECF No. 37 at 2. Defendant's minor  
18 children were living with her prior to her arrest in September, but have lived with  
19 their aunt periodically, including for an unknown five-year period. ECF No. 37 at 2.

1 Further, Ms. Samorano testified that after Defendant was arrested in September,  
2 including after her release, her children stayed with Ms. Samorano for about a  
3 month. After a warrant was issued in this case, Defendant asked her children's aunt  
4 to watch them, and she then went to a friend's house in Dixie, Washington. ECF  
5 No. 37 at 2, 4. Considering these factors together, Defendant's pretrial release is not  
6 appropriate.

### 7 CONCLUSION

8 Defendant has not rebutted the presumption that detention is necessary. The  
9 Government has shown by clear and convincing evidence that no combination of  
10 conditions of release will reasonably assure the safety of any other person and the  
11 community, and has shown by a preponderance of the evidence that no combination  
12 of conditions of release will reasonably assure Defendant's appearance as required.  
13 As such, detention is necessary, and the motion is denied.

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1 Accordingly, **IT IS HEREBY ORDERED:**

2 Defendant Monica Pesina's (01) Motion to Revoke Detention Order,

3 **ECF No. 58, is DENIED.**

4 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order and  
5 provide copies to all counsel, the U.S. Probation Office, and the U.S. Marshals  
6 Service.

7 **DATED** this 22nd day of January 2020.

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9 SALVADOR MENDOZA, JR.  
United States District Judge

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DEFENDANT MONICA PESINA'S MOTION TO REVOKE DETENTION  
ORDER - 12